

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES

v.

Noel Hernandez,

Defendant.

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Criminal No.: 04 CR 10319 WGY

**DEFENDANT'S MOTION TO SUPPRESS
OUT-OF-COURT IDENTIFICATION BY UNION TRAVEL EMPLOYEE**

NOW COMES the Defendant, Noel Hernandez, through counsel, and respectfully moves this Honorable Court to suppress the Out-of-Court Identification of Mr. Hernandez as a result of a photographic identification by an unknown employee of Union Travel in Lynn, Massachusetts, on or about July 14, 2004. In support thereof, counsel states the following:

1. On June 29, 2005, the undersigned counsel was notified that State Police Sergeant Thomas Quinn presented a single photograph of Hernandez to an unnamed female employee of Union Travel who identified Hernandez as the individual who purchased the tickets. (See Exhibit 1, attached hereto).
2. No report of the identification procedure has been provided.
3. The Defendant relies on and incorporates the arguments and authorities set forth in his previously filed motions and memoranda seeking the suppression of identifications made by Francisco Navarro.
4. It is respectfully submitted that submission of a single photograph to a witness for purposes of a photographic identification is hopelessly suggestive, especially in

the instant case, where the Government admits that it was a booking photograph, clearly indicating that the individual is in custody.

5. This disclosure of the out-of-court identification is untimely pursuant to Local Rule 116.1(C)(1)(f).

WHEREFORE based on the foregoing arguments and authorities this Honorable Court is respectfully urged to suppress the out-of-court identification by a Union Travel employee.

Respectfully submitted,



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Attorney for Defendant
Noel Hernandez

CERTIFICATE OF SERVICE

I, Peter Charles Horstmann, Esquire, hereby certify that on this 5th day of July, 2005, a copy of the foregoing DEFENDANT'S MOTION TO SUPPRESS OUT-OF-COURT IDENTIFICATION BY UNION TRAVEL EMPLOYEE was served electronically upon Nancy Rue, Assistant United States Attorney, United States Attorneys Office, One Courthouse Way, Suite 9200, Boston, MA 02210 and David G. Tobin, Assistant United States Attorney, United States Attorneys Office, One Courthouse Way, Suite 9200, Boston, MA 02210.



Peter Charles Horstmann, Esquire